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SUBJECT: Five manslaughter incidents - Geneva 2007 Communications Log #12.

1. (U) Mission has received a communication from Special Rapporteur on extrajudicial, summary or arbitrary executions regarding five incidents of manslaughter. It is number 12 on the Geneva 2007 Communications Log.

2. (U) Begin text of letter:

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Commission on Human Rights resolutions 2004/37, to General Assembly resolution 60/251 and to Human Rights Council decision 2006/102.

I have received information regarding a number of incidents in which there would appear to be significant evidence that members of the armed forces committed such crimes as murder and manslaughter in violation of provisions of the United States' Uniform Code of Military Justice (UCMJ). The crimes would, of course, also constitute violations of international human rights and humanitarian law. However, the information that I have received suggests that these cases were not submitted to court martial.

There are five such incidents that I would like to raise with your Government:

1. According to information that I have received, the United States Army Criminal Investigation Command (CID) investigated an Iraqi death occurring on or about 19 June 2003, in which "a US army soldier fatally shot an Iraqi national at the Safwan Bypass, Safwan, Iraq. Investigation established probable cause to believe SPC [omitted] committed the offense of... Voluntary Manslaughter when he disregarded the standing rules of engagement and intentionally shot and killed Mr. Mattar for stealing a box of MRE's." (Army CID Report of 8 September 2003, No. 0181-03-CID519-62190-5H1R/5H2/5Y2B9/9G2B/9G2C.) It is my further understanding that the CID report concluded: "This investigation is being terminated ... in that the action commander has indicated intent to take no action against the subject and no further investigative assistance is required by the commander." The information that I have received suggests that no court martial took place in relation to this incident, despite the finding by Army CID that voluntary manslaughter had been committed.

2. According to information that I have received, CID investigated a killing which occurred on 2 June 2003 in LSA Dogwood, Iraq. (Army CID Report of 4 August 2003, No. 0017-03-CID939-63985-5H3A/5Y2B0.) The extensive investigation, which included 46 attached exhibits, "established probable cause to believe that 1Lt [omitted] committed the offense of Involuntary Manslaughter ... when 1LT [omitted] gave an unlawful order to SGT [omitted] 105th MP CO, to shoot the tires out of a fleeing vehicle, which violated the rules of engagement (ROE), a lawful order which 1LT [omitted] had a duty to obey, and resulted in the unlawful death of Mr. Hamza." The report concluded that "the Staff Judge Advocate is of the opinion that significant admissible evidence is available to prosecute 1LT [omitted] for the offense[] of Involuntary Manslaughter". Nevertheless, a Commander's Report dated 10 September 2004 that I have received states that the involuntary manslaughter charge was dropped because "[although an unfortunate incident, 1LT [omitted] clearly had no intent to injure the fleeing Iraqi criminals."

3. According to information that I have received, CID investigated a

homicide which occurred on 12 August 2003 near Ad-Diwaniyah, Iraq in which "the victim and numerous other local nationals were attempting to sell items to members of a convoy. ... [and] 1LT [omitted], SSG [omitted], and SSG [omitted] while performing their duties as the roving patrol for CSC Qania chased away the victim and other local nationals, who fled on foot, east from the MSR. SSG [omission] began pursuing the victim on foot after the victim threw a rock just missing him. 1LT [omission] assisted in the pursuit and, after cornering the victim, told the victim to stop, using both verbal commands and hand signals. The victim picked up a baseball-sized rock and threw it at 1LT [omitted], missing him. 1Lt [omitted] then again commanded the victim to stop and come to him. The victim picked up another baseball-sized rock and threw it at 1LT [omitted]. 1LT [omitted] ducked out of the way, stood back up and pulled the charging handle of his m4 loading a round into the chamber, in full view of the victim. The victim then picked up another baseball size rock and was attempting to throw it at 1LT [omitted] when he fired one (1) round from his M4 rifle, striking the victim in his left shoulder." (Army CID Report of 25 September 2003, No. 0070-03-CID939-64002-5H6.) The case was closed because "the Staff Judge Advocate is of the opinion the shooting was a justifiable homicide and it is clear that no criminal act was involved."

¶4. According to information that I have received, CID investigated a homicide that occurred on 17 August 2003 outside of Abu Gharib prison, in which "a soldier accidentally shot and killed a reporter from Reuters News Agency." (CID Report of 20 January, 2004, No. 0143-03-CID259- 61191-5H9C2.) It is my further understanding that the reporter, Palestinian journalist Mazen Dana, was filming outside the prison after having received a proper press permit from U.S. authorities. According to the CID report which I have reviewed, the soldier fired at Dana because "he believed Mr. Dana was a hostile combatant when he raised an unknown device to his shoulder, holding it with both hands. The soldier thought the device was a Rocket Propelled Grenade (RPG) Launcher, but it was later determined to be a news agency videocamera." The report concluded that the incident was therefore an "accidental death", and the soldier was thus not prosecuted for any crime.

¶5. According to information that I have received, video footage by journalist Kevin Sites appears to depict a marine killing an unarmed and wounded Iraqi man in a Mosque at point blank range on 13 November 2004. In the video footage, one Marine can be heard yelling "He's fucking faking he's dead! He's faking he's fucking dead!" The Marine then fires directly at the apparently wounded man several times. Immediately following the shooting, another Marine can be heard stating "He's dead now." My understanding is that the Marine was investigated but not prosecuted.

While I do not wish to prejudge the accuracy of these allegations, I would note that, if they were accurate they might give rise to concern about the extent to which your Government is consistently imposing effective penal sanctions for grave breaches of the Geneva Conventions and, more generally, consistently prosecuting and punishing the unlawful use of lethal force. (For further discussion of the law in this area, see E/CN.4/2006/53, paras. 33-43.)

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

¶1. For each of the incidents raised above, are the facts alleged in the case summary accurate?

¶2. For each of the incidents raised above, please provide information on any criminal, disciplinary, or administrative sanctions that were imposed.

¶3. For each of the incidents raised above, has your Government provided compensation to the victim's family?

¶4. With respect to the incidents occurring on 2 June 2003 and on or about 19 June 2003, why was no prosecution conducted despite the investigator's conclusion that the evidence indicated that crimes of involuntary manslaughter or voluntary manslaughter, respectively,

had been committed? Was there any process to review decisions by commanders not to convene courts martial?

¶15. With respect to the incidents that occurred on 12 August 2003, 17 August 2003, and 13 November 2004, what was the legal basis for concluding that no crimes had been committed? Please provide information on any measures your Government took to prevent the recurrence of similar incidents.

¶16. Does your Government collect information on the initial disposition of offenses following a commander's preliminary inquiry into allegations? If so, please provide data on how many allegations of murder or manslaughter result in no action being taken, administrative action, non-judicial punishment, or the convening of a court martial. Similarly, please provide data on the kinds of courts martial - summary, special, and general - that have been established in such cases.

I undertake to ensure that your Government's response is accurately reflected in the report I will submit to the UN Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Philip Alston Special Rapporteur on extrajudicial, summary or arbitrary executions. End text.

Tichenor

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